

Research Protocol for Eviction Laws

Prepared by the Center for Public Health Law Research Staff

AUGUST 2018

Eviction Laws

- I. **Date of Protocol:** August 2018

- II. **Scope:** This cross-sectional dataset includes questions on the reasons for which a landlord may evict, details of the legal process required to evict a tenant, circumstances in which a landlord must accept a tenant’s attempt to cure a violation, notice requirements, and post-judgment proceedings. This dataset includes 40 United States cities — the 10 largest cities in the four Census regions. In order to capture the eviction process at the municipal level, both state and local municipal laws and policies were captured and coded.

- III. **Project Team:** Joshua Waimberg, JD; Megan Hatch, PhD; Alexandra Hess, JD; Amy Cook, JD; Larry Konyves; Xavier O’Connor; Cameron Comer; Nicole Sardella; Nina del Valle; Emily Forsee.

- IV. **Primary Data Collection**
 - a. **Project Dates:** May 31, 2018 – January 2020

 - b. **Dates Covered in the Dataset:** This is a cross-sectional dataset, capturing the state of the law in each city included in the study as of August 1, 2018.

 - c. **Data Collection Methods:** The research team consisted of two legal researchers (“Researchers”) and one supervisor (“Supervisor”). The Researchers conducted background research using secondary sources regarding eviction laws. The Researchers used the AmLegal and Municode websites, along with Westlaw Next, to identify which of the 40 cities studied have laws regulating evictions.

 - d. **Databases Used:** Research was conducted using AmLegal, Municode, Westlaw Next, and city websites.
 - i. Google was used to provide additional secondary sources, particularly those related to landlord/tenant court regulations and fees.

 - e. **Search Terms:**
 - i. Keyword searches:
 1. “Eviction”
 2. “Landlord”
 3. “Tenant”
 4. “Landlord tenant”
 5. “Unlawful detainer”
 6. “Forcible entry”
 7. “Forcible detainer”

8. “Foreclosure “/s “Eviction”
 - ii. Key word searches were supplemented by reviewing surrounding laws. The Researchers also recorded effective dates for the most recent versions of the laws.
 - iii. Once all of the relevant laws were identified for a jurisdiction, a Master Sheet was created for each jurisdiction. The Master Sheet includes the most recent legislative history and the effective date, for each law.
 - iv. All cities were redundantly researched to confirm that all relevant laws were being collected by the Researchers.

f. Inclusion or Exclusion Criteria:

- i. The following variables were included in the eviction laws dataset:
 1. Residential evictions by landlords of tenants with leases of a year or less.
- ii. The following variables were excluded in the eviction laws dataset:
 1. Residential evictions of at-will tenants.
 2. Evictions related to commercial property, farmland, and mobile homes.
 3. Evictions for causes such as nonpayment of taxes or required assessment, a lack of existence of a landlord-tenant relationship, bankruptcy, insolvency, possession for landlord’s self or family, occupancy conditioned on employment, refusing access to the landlord, withdrawal of the property from the rental market, possession following severe property damage by fire, abandonment, or tenant buyout.
 4. Restrictions on evictions based upon drug court entry upon drug- based eviction (Kansas City) or summary evictions (Las Vegas).

V. Coding

- a. **Development of Coding Questions:** The Team collaborated to determine the focus of the research and the key questions to be coded. The Researchers also conducted background research on eviction laws in the United States and reviewed secondary sources on the topic. The Researchers conceptualized coding questions, then circulated them for review by the Supervisor. When the questions were finalized, the Team entered the questions into MonQcle, a web-based software-coding platform. The Team then used the developed question set with the collected law to select answers from the response set.
- b. **Coding Methods:** Researchers coded responses based on objective, measurable aspects of the law. Caution Notes were provided to explain any unique regulations and/or where the law was unclear.

Below is an explanation of the rules used when coding specific questions and answer choices. Note, only responses that require an explanation of the legal text used to code are listed. Other responses not requiring an explanation are not included here, but are included in the final dataset.

- **Question 1.1: What are the penalties for unlawful eviction?**

- An “unlawful eviction,” also known as a “lock-out” or a “self-help eviction,” was coded in reference to an attempted eviction without the use of the judicial process mandated by law.
- Where there were multiple penalties for an unlawful eviction, all penalties were captured.
- Where the law stipulated the penalty was “the greater of,” or a choice between, two penalties, both penalty options were coded.
- **Question 2: For what causes can a landlord evict a tenant?**
 - Coded “Nonpayment of rent” where the law referred to a tenant’s “default.”
 - Coded “Material breach of lease” where the law referred to a tenant’s non-specific “default with rental agreement” or “noncompliance with rental agreement.”
 - Coded “Criminal activity” where the law allowed for evictions for tenant actions such as illegal business operations, convictions of public indecency, committing waste, violent acts or threats, intentional or reckless damage to property, and/or public nuisance.
 - Coded “Remaining on the property after the expiration of the lease” where the law allowed for evictions of those likely to continue in possession of the property after the designated termination date.
 - Coded “Statutory tenant violation” where the law allowed for eviction for removal of a smoke alarm.
- **Question 2.1: For what causes must the landlord accept a tenant’s attempt to cure?**
 - Coded “Statutory tenant violation” where the law allowed for eviction for removal of a smoke alarm.
- **Question 3: Does a landlord waive their right to evict for nonpayment of rent by accepting partial payment of rent?**
 - Coded “Yes” where the landlord can avoid waiver if they have had the tenant put into writing that partial payment does not waive the right to evict.
 - Coded “No” where the jurisdiction explicitly requires full payment of rent for the landlord to waive their right to evict for nonpayment.
- **Question 4: In cases of nonpayment of rent, how many days’ notice must a tenant be given before a landlord may file for eviction?**
 - Coded without regard to limitations regarding business days, weekends, and holidays.
- **Question 5: In cases besides nonpayment of rent, what is the maximum number of days’ notice a tenant must be given before the landlord may file for eviction?**
 - Coded based on the longest amount of time required for notice of a cause of action not related to the nonpayment of rent.
 - Coded without regard to limitations regarding business days, weekends, and holidays.
 - Coded “None” where there was only a single amount of time required for notice of a cause of action not related to the nonpayment of rent.
 - This time period was captured in the question below.

- **Question 6: In cases besides nonpayment of rent, what is the minimum number of days' notice a tenant must be given before the landlord may file for eviction?**
 - Coded based on the shortest amount of time required for notice of a cause of action not to the nonpayment of rent.
 - Coded without regard to limitations regarding business days, weekends, and holidays.
 - Was not coded based on timing for expedited eviction procedures.
- **Question 7: What methods of notice are permitted?**
 - Coded both the primary and alternative methods of notice required by the law.
 - Coded without regard for requirements for combinations of different methods of notice.
 - Coded "Certified mail" where the law required "registered mail."
 - Coded "Regular mail" where the law required "first class mail."
 - Coded "Written notice delivered to a person of suitable age and discretion" where the law required delivery to a person residing at the premises, but did not specify as to that person's required age.
- **Question 8: What is the filing fee?**
 - Coded based on the lowest applicable fee if there was a fee schedule dependent on the amount in controversy or other jurisdictional requirement.
 - Numerical fees were rounded up to the nearest whole number.
- **Question 9: What documents need to be included in the complaint?**
 - Coded "Building certificate" where there was a requirement to include proof that the building is in compliance with the relevant occupancy codes.
 - Not all of the documents required to be included in the complaint were captured in this question; only the selected answer choices were included in the project's scope.
- **Question 10: What methods of service are permitted?**
 - Coded both the primary and alternative methods of notice required by the law.
 - Coded "Delivery to person of suitable age" where the law specified the minimum age of the individual receiving service.
 - Coded "Post and mail" where the law required that service be delivered to the premises and mailed to the premises in conjunction. In those situations, "Delivery to premises," "Mail," and "Certified mail" were not coded.
 - Coded "Delivery to premises" where the law allowed service by commercial courier service or overnight delivery service.
- **Question 11: What is the minimum number of days before an initial appearance that a tenant must receive service?**
 - Coded based on general rule, and exceptions for specific circumstances were scoped out.
- **Question 12: What is the minimum number of days a trial can be scheduled for after the landlord filed the complaint?**

- Where the jurisdiction began to track time from the “issue of joinder,” timing was counted from that point forward.
- **Question 13: What is the maximum number of days a trial can be scheduled for after the landlord filed the complaint?**
 - Where the jurisdiction began to track time from the “issue of joinder,” timing was counted from that point forward.
 - Allowances in the law for extended or reduced timing of continuances (such as those agreed to with both parties consent, those requiring payment, or through an expedited process) were not captured.
- **Question 14: What is the total maximum length of continuances in eviction proceedings?**
 - Allowances in the law for extended or reduced timing of continuances (such as those agreed to with both parties consent, those requiring payment, those requiring good cause, or through an expedited process) were not captured.
 - Coded “No Maximum” where there were no relevant limitations included in the law.
- **Question 15: Must a tenant answer in writing?**
 - Coded “Yes” where the law required that the answer be filed.
- **Question 16: Does the tenant have a right to a jury trial?**
 - Coded “Yes” where the only requirements for a jury trial were the raising of “a triable issue of fact” or presenting a “timely request.”
 - Coded “Yes, but only under certain circumstances” where the law stipulated requirements for a tenant to meet to request a jury trial, including timing requirements, and the payment of costs and/or fees.
- **Question 17: What defenses are available to a tenant?**
 - Requirements that tenants must meet to use a specific defense were not captured.
 - Coded “Any legal or equitable defense” where there was a defense where the lease was deemed “unconscionable,” or where there was no just cause for eviction.
 - Coded “Retaliation” where the law states that tenant cannot be evicted for participation in a tenant’s association or for reporting a health or safety violation.
 - Coded “Discrimination” where there was a defense for evictions on the basis of race, sex, gender, religion, national origin, immigration, or citizen status.
 - Not all potential defenses included in the law were captured in this question; only the selected answer choices were included in the project’s scope.
 - For example, defenses related to the lack of knowledge of the offense, or those related to improper use of forms/notice in the eviction process, were scoped out.
- **Question 19: Are settlements required to be reviewed by the court?**
 - Coded “No” where a settlement-review requirement was not specified in the law or where the law only required the court to describe the terms of the settlement to the parties.

- **Question 20: What recovery may a landlord seek in eviction proceedings?**
 - Coded “Court costs” where the law referred to “statutory costs.”
 - Coded “Damages” where the law allowed for recovery of multiplied back rent
 - Landlord recovery arising only out of the appeal process was not captured.
 - Landlord recovery dependent on certain actions were captured regardless of the action.
 - Landlord recovery limits and inclusion of “appropriate” and “circumstantial” remedies were not captured.
- **Question 20.2: What costs can be paid out of a security deposit?**
 - Coded “Damages” where the law allowed for the payment of charges out of a security deposit for which the tenant is legally liable.
 - Coded “None” where any costs paid out of a security deposit must be specified in the lease to be paid.
- **Question 21.1: If tenant files for appeal, is a stay of execution required?**
 - Coded “Yes, only if tenant pays rent” where the tenant is required to pay a bond or funds in order to qualify for the stay of execution.
 - Coded “No” where the decision to issue a stay of execution is not required and/or is solely at the discretion of the court.
 - The existence of a “pauper’s affidavit” or an alternative to payment on appeal for indigent defendants without ability to pay did not impact coding.
- **Question 22: Can a default judgment be overturned?**
 - Coded “No” where the law did not specify.
- **Question 23: What is the maximum length of a discretionary stay of execution following judgment?**
 - Coded based on the primary requirement included in the law, and exceptions for certain individuals involved in (e.g. the disabled) or types of evictions were not captured.
 - Coded “None” where the law did not specify regarding the maximum amount of time for a discretionary stay or did not discuss discretionary stays.
 - Did not code based on stays related to motions for a new trial or appeal.
- **Question 24: How soon may the landlord physically evict the tenant after a judgment for landlord possession?**
 - Coded “No limit” where the law did not specify.
- **Question 25: Is the tenant entitled to additional notice prior to being physically evicted?**
 - Coded based on the primary requirements included in the law.
 - Coded “Yes” if notice of judgment is required following judgment against the tenant.
 - Coded “No” if additional notice is not needed due to the presence of the tenant in court.
- **Question 26: What restrictions exist that would postpone a physical eviction?**
 - Coded “Nighttime” where the law restricted evictions after 5:00pm.

- Coded “None” where no such restrictions existed in the law or where postponement could occur by agreement of the tenant and landlord.
- **Question 27: Which eviction cases become public record?**
 - Coded based on the primary requirements included in the law, and did not capture where the landlord or court could take action to change the sealed/public record status.
- **Question 28: When are there special provisions for eviction when normal procedures may not apply?**
 - Coded “Rent-controlled housing” where the law requires special eviction proceedings for legislatively protected housing.
 - Coded “None” where no such restrictions existed in the law.

VI. Quality Control

- a. **Quality Control – Background Research:** All cities were 100% redundantly researched to confirm that all relevant laws were being collected by the Researchers. The Researchers independently recorded the relevant citations from every state, municipality, and/or relevant jurisdiction with an eviction law or policy, including statutes, regulations, and court rules. Once all of the relevant laws were identified for a jurisdiction, each Researcher created a Master Sheet for each city. The Master Sheet includes the most recent legislative history, and the effective date, for each law. The Supervisor reviewed the Master Sheet and Redundant Master Sheet for each jurisdiction, and the Team resolved each divergence prior to collecting the relevant laws.
- i. The research showed that 40 of the 40 cities included in the project regulate evictions.

b. **Quality Control - Coding**

- i. **Original Coding:** Quality control of the original coding consisted of the Supervisor exporting the data into a Microsoft Excel document to examine the data for any missing entries, citations, and caution notes. All needed citations and other entries were added and unnecessary caution notes were deleted.
- ii. **Redundant Coding:** The redundant coding process is fully independent, redundant coding by two Researchers for each jurisdiction. Redundant coding means that each jurisdiction (a record) is assigned and coded indecently by two Researches. 100% of the jurisdictions that had a law on the eviction process (40 of 40) were redundantly coded throughout the life of the project. Divergences, or differences between the original and redundant coding, were resolved through consolation and discussion with subject matter experts and the Team.

Quality control of the redundant coding consisted of the Supervisor exporting the data into a Microsoft Excel document when the Researchers completed redundant coding to calculate divergence rates.

Coding for all 40 jurisdictions was completed in a single batch, and the rate of divergence was 15.2% in August 2019. Comments on coding divergences were

entered by Researchers into a coding review sheet, and all divergences were resolved through discussion with and review by the Supervisor. Questions that caused confusion were edited for clarity, and coding scheme decisions were entered into this document. Coding was then checked across all of the datasets to ensure a consistent coding scheme.

- iii. **Post-Production Statistical Quality Control:** In order to assess the overall error rate of the dataset with a 95% confidence interval with a 5% margin of error, Statistical Quality Control (SQC) was performed after all of the original and redundant coding was completed with a 2.99% divergence rate.
- iv. **Final Data Check:** Prior to publication, the Supervisor downloaded all coding data into Microsoft Excel to do a final review of coding answers, statutory and regulatory citations, and caution notes. All unnecessary caution notes were deleted and all necessary caution notes were edited for publication. Any responses which were inconsistent with the project's coding rules were updated. Any missing citations were added.